

TOWN OF DAYTON MAINE
ZONING BOARD OF APPEALS

Dear applicant for an appeal:

In order for the Board of Appeals to consider a case, the law requires that you present the Board with a complete application. The purpose of this letter is to provide you with instructions on how to meet your responsibilities, so the Board may hear your case and judge fairly.

The first thing we recommend is that you review the municipal ordinance and make sure you understand why your permit application was denied. Then you will be prepared to complete the application form given to you. If you do not know what zoning district your property is in or specific zoning restrictions on the property you may obtain this information from the Code Enforcement Officer.

Next you must provide the Board with the factual information required on the form given to you, therefore, you must provide the Board of Appeals with proof that you have a legal interest in the property about which you are bringing an appeal, in addition to information about the property, including any details about its physical characteristics. It may be helpful to describe the neighboring property as well. Although the Board of appeals will make a site inspection of the property prior to conducting a public hearing on your appeal. (you are certainly entitled to accompany board members when they make that site visit. Just let them know you would like to be present.)

Then you must decide what kind of appeal you wish to bring. Your options are to bring an administrative appeal; a variance appeal; or both. The Code Enforcement Officer may give you some guidance in making that decision, but ultimately it is your decision to make not the CEOs. What are the differences?

An administrative appeal is an appeal from a decision of either the CEO or the Planning Board, which you think is a wrong decision. You may think it is wrong because you do not agree with how the ordinance is being interpreted, or you think the Town made some administrative error when processing your permit application. For example, if you have a non-conforming use you may need to bring an administrative appeal to challenge the CEO's interpretation of "expansion" On the application you must explain what the decision said, what you want to do with your property, why you think the decision was wrong, and what you would like the Board of Appeals to do about it.

A variance appeal is an appeal from the denial of a permit because the CEO says you cannot meet one or more of the dimensional standards of the ordinance, such as setback, lot coverage, or parking space requirements. On the application you must illustrate precisely what dimensional requirements you do not meet and by how much your proposed project fails to meet them. But you must also do something else. State law requires the Board of Appeals to find that you will experience an "undue hardship" if the appeal is not granted. "Undue hardship" is defined by state law. It consists of four tests. You must show that you will meet all four tests before the Board can grant you a variance. You, in turn, bear the burden of proving to the Board that you actually do meet all those tests. If you do not prove this to their satisfaction, the Board does not have the legal authority to grant you a variance. those tests are:

1. That the land in question cannot yield a reasonable return unless the variance is granted.
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
3. The granting of a variance will not alter the essential character of the locality, AND
4. The hardship is not the result of action taken by the applicant or a prior owner.

#1 What the Board will be looking for under this test is proof that without a variance you cannot make reasonable use of your property. For example, if you have a single, undeveloped lot not big enough to put a 10 x 20 foot house and a septic system on without a setback variance in a residential neighborhood, the ordinance has denied you a reasonable return on that residential lot. However "reasonable return" in the eyes of the law does not mean maximum financial return for you or as high a return as your personal financial circumstances would require in order to profit from developing the property. Therefore the Board may legally limit the size of the house you do build to one which yields more than a reasonable return. The courts have also ruled that family circumstances are not a relevant consideration. A variance is for the property not for you or your family.

#2 What the Board will be looking for from is proof from you that your property NOT your personal circumstances, is somehow different from other property in the neighborhood. Difference could include its shape, its topography, or its unique location.

#3 To meet test three you must prove to the Board that what you propose to do will not change the neighborhood or pose health or safety problems. This is usually the easiest test to meet.

#4 Past history of the property is relevant, under this criteria, An example might be one where the prior owner split the lot in question out of a larger parcel and in so doing created a substandard lot after zoning was enacted. You will therefore need to present to the Board the history of how the property was created and developed over the years.

If you think you can met all four tests, and if you truly need one or more dimensional variances, you should proceed with a variance appeal.

Although it is unusual to apply for both an administrative appeal and a variance appeal, you are entitled to do so. You may for example want a variance but think that if a variance is not granted you may still be able to get the result you want through a change in the interpretation of the ordinance. In this instance it is best to apply for both at the same time. Whether you make one or two appeals **BE SURE TO COMPLETE** the application form and provide the Board with as much concrete documentation of your case as you can. keeping in mind the Board will weigh the nature of the evidence submitted and rely on only that evidence it judges substantial, relevant, and credible. In addition to any written material submitted with the application, you may also bring to the hearing any witnesses you wish to have present evidence on your behalf about the property in question, any sworn written statements from individuals with personal knowledge of the property, and any documentation of previous building permits or ordinances.

Your appeal must be submitted to the Board of Appeals within 30 days of the issuance of the CEO's decision in order for the appeals to be heard by the Appeals Board. They are not obligated to hear any appeals until you have provided them with all the information required on the form.

In the event you are granted a variance, you must record it in the Registry of Deeds within 30 days according to state law, in order for the variance to be valid. Therefore be sure to have a signed form from the Board of Appeals. You should also be advised that in accordance with state law the Board of appeals members have 30 days to reconsider their decision, and interested parties have 30 days to appeal the Appeals Board decision to court. Therefore until the 30 days has expired you cannot be certain the Board of appeals decision is final.

Sincerely

Dayton Zoning Board of Appeals